

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. RUSSELL K.  
HILL,

Plaintiff,

-against-

5:17-CV-684 (LEK/TWD)

SEALED DEFENDANT ONE, *et al.*,

Defendants.

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**DECISION AND ORDER**

**I. INTRODUCTION**

This matter comes before the Court following a Report-Recommendation filed on July 7, 2017, by the Honorable Thérèse Wiley Dancks, U.S. Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3. Dkt. No. 5 (“Report-Recommendation”). Pro se plaintiff Russell K. Hill timely filed Objections. Dkt. Nos. 7 (“Objections”).

**II. LEGAL STANDARD**

Within fourteen days after a party has been served with a copy of a magistrate judge’s report-recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b); L.R. 72.1(c). If no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. *Barnes v. Prack*, No. 11-CV-857, 2013 WL 1121353, at \*1 (N.D.N.Y. Mar. 18, 2013); *Farid v. Bouey*, 554 F. Supp. 2d 301, 306–07, 306 n.2 (N.D.N.Y. 2008), overruled on other grounds by *Widomski v. State Univ. of N.Y. (SUNY) at Orange*, 748 F.3d 471 (2d Cir.

2014); see also *Machicote v. Ercole*, No. 06-CV-13320, 2011 WL 3809920, at \*2 (S.D.N.Y. Aug. 25, 2011) (“[E]ven a *pro se* party’s objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate’s proposal, such that no party be allowed a second bite at the apple by simply relitigating a prior argument.” (quoting *Howell v. Port Chester Police Station*, No. 09-CV-1651, 2010 WL 930981, at \*1 (S.D.N.Y. Mar. 15, 2010))). “A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” § 636(b).

### III. DISCUSSION

Hill argues that the Court should reject Judge Dancks’s Report-Recommendation because she “failed to distinguish between published and unpublished opinions.” *Objs.* at 1. Even if that were the case, it would not matter, for dismissal is mandated by a *published* Second Circuit opinion, *United States ex rel. Mergent Services v. Flaherty*, 540 F.3d 89 (2d Cir. 2008). There, the court held that *pro se* plaintiffs cannot bring False Claims Act *qui tam* actions. *Id.* at 90. Hill is attempting to do just that. Thus, Judge Dancks was correct to recommend dismissal of his complaint. *Rep.-Rec.* at 5. The remainder of Hill’s Objections boil down to a disagreement with the reasoning of the *Flaherty* court. *Objs.* at 2–5. Hill’s arguments miss the mark, because “it is axiomatic that a district court cannot simply take a position contrary to that of its circuit court.” *United States v. Russotti*, 780 F. Supp. 128, 131 (S.D.N.Y. 1991). Since this Court is bound to follow *Flaherty*, it adopts Judge Dancks’s Report-Recommendation in its entirety.

### IV. CONCLUSION

Accordingly, it is hereby:

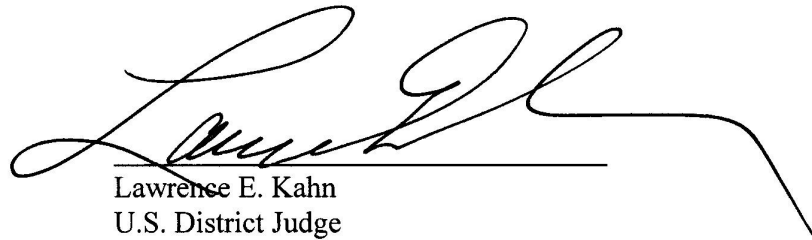
**ORDERED**, that the Report-Recommendation (Dkt. No. 5) is **APPROVED and ADOPTED in its entirety**; and it is further

**ORDERED**, that Hill's complaint (Dkt. No. 1) is **DISMISSED without prejudice**; and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Decision and Order on Hill in accordance with the Local Rules.

**IT IS SO ORDERED.**

DATED: August 28, 2017  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge